

No. 5:05-CR-251-1H  
No. 5:12-CV-549-H

## ORDER

This matter is before the court on petitioner's motion to vacate or set aside sentence pursuant to 28 U.S.C. § 2255, filed August 20, 2012 [DE #85]. Petitioner previously filed a § 2255 motion, which the court dismissed on the merits on October 13, 2009. Because the motion presently before the court is a successive § 2255 motion, this court is without jurisdiction to consider it. See 28 U.S.C. § 2255(h) ("A second or successive motion must be certified . . . by a panel of the appropriate court of appeals . . . ."). Accordingly, petitioner's motion to vacate is DISMISSED WITHOUT PREJUDICE to petitioner's right to apply to the Fourth Circuit for leave to file a successive § 2255 motion.

the denial of a constitutional right. Accordingly, a certificate of appealability is not issued as to this order.

This 22nd day of August 2012.



---

MALCOLM J. HOWARD  
Senior United States District Judge

At Greenville, NC  
#31